



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/141621

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance/Family Care, a hearing was held on September 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's monthly cost share for FC as \$505.93 effective May 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Chris Sobczak

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 6, 2012, the Petitioner submitted a renewal for Family Care. The renewal application indicated the Petitioner's monthly unearned income of \$1,427, a WE energies bill of \$ 129.07, rent of \$329 and a cable bill for \$138.75. No medical remedial expenses were submitted. All

previous medical remedial expenses ended. Previous medical remedial expenses were \$161.99/month.

3. On April 9, 2012, the agency issued a Notice of Decision informing the Petitioner that the agency had determined her monthly cost share as \$505.93 based on the information submitted with the renewal.
4. On June 15, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance is \$878, as set out in the Medicaid Eligibility Handbook § 39.4.2. Another deduction is special housing expenses. MEH § 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. MEH § 15.7.3. In order to use the medical/remedial expense as a need item and as an income deduction in the cost share calculation, the expense must meet the following criteria:

1. The institutionalized individual must be legally liable for payment of the incurred medical/remedial expense. Any portion that will be paid by a legally liable third party such as private health insurance, Medicare, Medicaid, etc. cannot be allowed as a deduction; and
2. The institutionalized individual must provide verification of the allowable expense.

MEH §§ 20.3.1. and 27.7.8.1.

The agency properly budgeted monthly unearned income of \$1,492, a basic needs allowance of \$878 and a special housing amount of \$108.07. The housing deduction was calculated in accordance with MEH § 28.8.3.1 by subtracting rent expense of \$329 and utility expense of \$129.07 from \$350.

Petitioner submitted a monthly expense report at the hearing containing additional monthly expenses she asked to be considered. In particular, the Petitioner indicated that she has \$115/month in medical remedial expenses. She did not produce any additional documentation to support the monthly expenses reported. Additional time was granted for the Petitioner to produce documentation to support the expenses she reported. No additional documentation was received. It is the responsibility of the recipient to produce verification of medical remedial expenses.

Based on the evidence submitted and reviewed, the agency properly calculated the Petitioner's cost share as \$505.93/month.

CONCLUSIONS OF LAW

The agency properly calculated the Petitioner's cost share as \$505.93/month.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

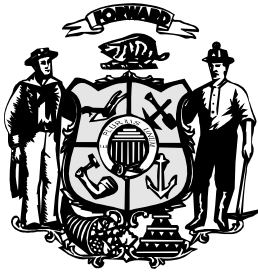
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 1, 2012.

Milwaukee Enrollment Services
Office of Family Care Expansion